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Security Council

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Provisional

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Wednesday, 10 July 2002, 3.30 p.m.
New York

President:	Sir Jeremy Greenstock	(United Kingdom of Great Britain and Northern Ireland)
Members:	Bulgaria	Mr. Tafrov
	Cameroon	Mr. Tidjani
	China	Mr. Wang Yingfan
	Colombia	Mr. Valdivieso
	France	Mr. Levitte
	Guinea	Mr. Boubacar Diallo
	Ireland	Mr. Ryan
	Mauritius	Mr. Koonjul
	Mexico	Mr. Aguilar Zinser
	Norway	Mr. Kolby
	Russian Federation	Mr. Gatilov
	Singapore	Mr. Mahbubani
	Syrian Arab Republic	Mr. Wehbe
	United States of America	Mr. Negroponte

Agenda

The situation in Bosnia and Herzegovina

Letter dated 3 July 2002 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council (S/2002/723)

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02-47073 (E)

The meeting resumed at 3.35 p.m.

The President: I should like to inform the Council that the representative of Yugoslavia has requested to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Šahović (Yugoslavia) took the seat reserved for him at the side of the Council Chamber.

The President: The next speaker inscribed on my list is the representative of Fiji. I invite him to take a seat at the Council table and to make his statement.

Mr. Naidu (Fiji): Fiji congratulates the United Kingdom and you personally, Sir, on your assumption of the presidency, and we commend you for promptly convening this open debate.

Fiji sees both peacekeeping and the International Criminal Court (ICC) as solid reinforcements of the Charter goal of maintaining international peace and security, for which the Security Council is the mandated organ. It is inconceivable that one stands to threaten the other. They must be nurtured and encouraged to grow together, rather than one undermining the other.

Fiji has continued to contribute peacekeeping personnel since joining the United Nations some 30 years ago. Fiji was also the fifth Member State to have ratified the Rome Statute, which it did on 29 November 1999. We did so with the full knowledge that the Statute permits States parties to repatriate their personnel serving in missions or operations abroad to be subjected to its national legal jurisdiction under the principle of complementarity set out in article 17. Fiji has, in fact, taken this course of action in a few recent cases. We are also confident that mischievous, malicious allegations or complaints will be screened by a majority decision of judges in the Court's Pre-Trial Chamber and in review in the Appellate Chamber. These mechanisms safeguard the integrity and the impartiality of the Court against politically motivated claims.

It is for this reason that my Government ratified the Rome Statute. We do not see the ICC as a threat to international peace and security. As such, we definitely do not object to article 16 of the Rome Statute, which is concerned primarily with security threats or breaches, or acts of aggression under Chapter VII of the Charter.

The emergence of the ICC at this juncture can only lend support to the emerging global vision to boost preventive diplomacy — or conflict prevention — peace-building and peacemaking. This shifting focus is a positive global step that is reflective of the mood of rapprochement at the end of the twentieth century. The deep scars of the world wars of that century created the need for international governance and peacekeeping by the United Nations. We now celebrate relative world peace; we recognize where genocide aggression and crimes against humanity have occurred and where, hopefully, they have been averted; and we move forward the process of building peace and preventing conflict. We can achieve these goals with the United Nations as robust as it is today, more enlightened and positively invigorated to take the goals of the Organization and the Charter higher than when they were first espoused, over 50 years ago — even more so with the ICC on board.

Under Article 24 of the Charter, the United Nations membership confers on the Security Council the primary responsibility for the maintenance of international peace and security. In carrying out its duties under that responsibility, the Security Council acts on our behalf — collectively — making this open meeting a critical discussion that will assist you in your task, Mr. President, of settling this difficult question expeditiously and amicably. Moreover, the Security Council's functions and powers, including those set out in Chapter VII, do not include amending treaties. To do that would violate established principles of international treaty law.

Based on those considerations, Fiji cautions that granting the concessions contained in the draft resolutions would set a dangerous precedent, with drastic consequences, and most certainly would compromise the underlying principles and the integrity of both the ICC and the Security Council.

The President: The next speaker inscribed on my list is the representative of Bosnia and Herzegovina, to whom I give the floor.

Mr. Kusljugić (Bosnia and Herzegovina): At the outset, I would like to congratulate you, Sir, on your assumption of the presidency of the Security Council for the month of July.

Bosnia and Herzegovina has often been the focus of Security Council debates over the past decade with regard to a number of extremely important and difficult issues. We are participating in this discussion today as the host country to the United Nations Mission the extension of whose mandate is being considered. We would therefore like to participate constructively in finding a solution to the important issue before the Council.

I speak on behalf of the country that has experienced genocide and war crimes during the past decade, and for which the Security Council, this very body, has established an ad hoc tribunal in order to prosecute those suspected of perpetrating the most horrendous of crimes committed on the territory of the former Yugoslavia. Consequently, Bosnia and Herzegovina has signed and ratified the Statue of the permanent Court, the International Criminal Court, as it well understands the consequences of war crimes and the need for justice and for the prevention of future atrocities.

We are faced today with concerns regarding potential misuse of the International Criminal Court (ICC) as regards the participation of peacekeepers in the United Nations Mission in Bosnia and Herzegovina (UNMIBH), as well as in other peace missions of the United Nations. In the specific situation of Bosnia and Herzegovina and the United Nations Mission, we find it very difficult to conceive of a situation in the next six months that would bring the Statute of the International Criminal Court into play. We are also of the opinion that there are sufficient safeguards in the Statute itself.

Nonetheless, for any country concerned about the possible extradition of its nationals participating in UNMIBH, we hereby state our readiness to consider during the next six months, and bearing in mind the Rome Statute, modalities for the transfer, surrender or extradition of their nationals suspected of committing crimes under the jurisdiction of the Rome Statute, in order to reach mutually acceptable agreement on this issue. We would also like to mention that we already have bilateral extradition agreements in place with some of the countries concerned. We are doing so out of the deep conviction that the continued presence of UNMBIH at full capacity during the next six months is essential to completing its core mandate. It will also enable the European Union to take over the next phase of this important job smoothly and according to plan.

Allow me to remind the Council that after the signing of the Dayton Peace Agreement the United Nations Mission in Bosnia and Herzegovina was one of the key players in building a self-sustaining and peaceful country. The United Nations Mission has made tireless efforts, with visible and measurable results, towards reconciliation and reconstruction in Bosnia and Herzegovina. Multi-ethnic police forces and a functioning State Border Service are just two of the great achievements made with the leadership, expertise and the support of the United Nations.

The existing level of stability in Bosnia and Herzegovina is a source of hope, and provides a framework for the steady development of democratic institutions, the rule of law and respect for human rights. Those efforts have recently been crowned by our accession to the Council of Europe. In this context, the extension of the United Nations Mission's mandate is important to making further progress in the areas of security and an independent judiciary. While thanking the United Nations Mission for its contribution, we are also grateful to the European Union for its readiness to take over.

We strongly believe that it would be very unfortunate if the final steps to be taken by this successful Mission — to which, among others, the United States has made a particularly important contribution — were to come to an abrupt end. That is why we would like to believe in the wisdom and reason of those who are carrying out the responsible duty of preserving peace in our world. We are therefore hopeful that an acceptable solution will be found and that the solidarity and common interests of the international community in peacekeeping will be preserved.

The President: The next speaker inscribed on my list is the representative of Ukraine. I invite him to take a seat at the Council table and to make his statement.

Mr. Kuchinsky (Ukraine): Let me, first of all, join my colleagues in congratulating you, Mr. President, on your assumption of the presidency of the Security Council. I would like to thank you for organizing today's debate, and to express our

appreciation to Ambassador Paul Heinbecker of Canada for his initiative.

By holding this meeting the Security Council is promoting the principles of transparency and is clearly indicating its readiness to hear the opinions of non-members of the Council as it considers one of the most important issues on its agenda. This meeting also demonstrates how indispensable issues of international justice are for the maintenance of international peace and security.

As a State signatory of the Rome Statute that intends to become a party to the Statute shortly, my country strongly supports the principles and values contained therein. As one of the biggest contributors of troops to the United Nations, Ukraine regrets that the Security Council is divided over a problem that could undermine its credibility, call into question the legitimacy of its decisions and challenge the effectiveness of United Nations peacekeeping activities. Ukraine is therefore deeply concerned about the current impasse in the Council.

I do not intend to elaborate on the legal aspects of the matter; these are the prerogative of other bodies. Instead, let me emphasize that under the present circumstances a decision of the Security Council will definitively affect the future development of international law and influence the practice of United Nations peacekeeping. We believe it should be worked out with outmost care and caution.

My delegation understands the concerns of the United States. We hope that those concerns will be addressed pragmatically. Moreover, we call upon every member of the Security Council to make every possible effort to find a generally acceptable solution which: first, should not weaken United Nations peacekeeping; secondly, should not harm the integrity of the Rome Statute; thirdly, should not create a precedent of interference by the Security Council with the sovereign rights of the Member States in the treaty-making process; and fourthly, should not create a conflict between the powers of the Security Council under Chapter VII of the Charter and the legal obligations entered into by Member States in compliance with the provisions of the United Nations Charter.

As a contributor to international peacekeeping efforts in the Balkans, Ukraine views a premature termination of the mandate of the United Nations Mission in Bosnia and Herzegovina as leading to serious repercussions. We deeply regret that, having achieved significant practical results, the Mission faces the possibility of an abrupt ending. This unfortunate scenario will, in our view, harm the positive trends in Bosnia and Herzegovina in the spheres of the re-establishment of the rule of law, police reform, border control and the fight against terrorism and illegal migration.

Ukraine fully supports steps taken by the European Union to avoid a vacuum in international efforts in Bosnia and Herzegovina. My country is determined to contribute to those activities in the framework of the new European Union Police Mission in Bosnia and, if necessary, to speed up the relevant preparatory processes. However, we continue to look forward to a satisfactory outcome of the current situation, which will ensure a smooth transition from UNMIBH to the European Union Mission, preserve the effectiveness of United Nations peacekeeping activities and maintain the United States engagement.

Mr. Diallo (Guinea) (*spoke in French*): Mr. President, allow me first to convey to you the sincere thanks of the delegation of Guinea for your warm congratulations on the occasion of the proclamation of the African Union at Durban.

The present meeting attests to the interest the States Members of our Organization attach to the question of the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). This meeting enables us to exchange views on considerations concerning the Rome Statute of the International Criminal Court in relation to the peacekeeping operations.

The international community's engagement in the Balkans amply testifies to its determination to find a lasting solution to the problems in that part of the world, including in Bosnia and Herzegovina. The various reports of the Secretary-General on UNMIBH clearly depict the efforts deployed and the progress made, as well as the challenges the Mission faces.

The unhindered adoption of Council resolutions on UNMIBH and their implementation by the international community have so far been possible only thanks to the combined efforts of all. That dynamic must continue in a spirit of responsibility. But the recent discussion in the Security Council demonstrates the delicacy and complexity of the question of extending the mandate of UNMIBH. My delegation

considers that the question deserves a comprehensive approach taking into account both its legal and its political aspects.

The 1 July 2002 entry into force of the Rome Statute, just four years after its adoption on 17 July 1998, proves the extent of the international community's increasing determination to fight all forms of impunity, particularly for war crimes, crimes against humanity and genocide.

In fact, we must recall that the International Criminal Court, unlike the ad hoc tribunals for the former Yugoslavia and for Rwanda, is a permanent court whose universality lies in the acceptance by States of its Statute in the form of a treaty to which they freely accede. It is precisely that relation of the States parties to the treaty that gives the International Criminal Court all its integrity and strength.

In conformity with the principles of international law and bearing in mind the hierarchy of legal norms, no Security Council resolution could therefore modify a provision of an international treaty.

Moreover, my delegation fully appreciates the importance of peacekeeping operations. It perfectly understands the concerns of certain States not parties to the Rome Statute, in relation to the possible appearance of their citizens who are members of United Nations peacekeeping forces before the International Criminal Court, whose authority those States do not recognize. However, we should underline that in accordance with the principle of complementarity, national courts maintain their primary responsibility for legal proceedings and judgements.

Equally, we are conscious of the fundamental role that those States play in peacekeeping operations throughout the world, and we encourage them to maintain their efforts.

Finally, my delegation shares the analysis made by the Secretary-General at the 30 June 2002 public meeting on UNMIBH, the extension of whose mandate must not be linked to the Rome Statute of the International Criminal Court.

That is why it is now up to all of us to adopt an approach that could reconcile the various aspects of the triptych — the extension of the mandate of UNMIBH, the preservation of the integrity of the Rome Statute of the International Criminal Court and the safeguarding of peacekeeping operations — while simultaneously bearing in mind the need to preserve the credibility of the United Nations.

Mr. Valdivieso (Colombia) (*spoke in Spanish*): Colombia values the convening of this open meeting, because it provides an opportunity for Members of the United Nations to express our views on the relationship between peacekeeping operations and the Rome Statute. Colombia associates itself with the statement made by Costa Rica on behalf of the Rio Group. We wish to make some additional comments of national interest.

The informal consultations and the various meetings that we have held on this question have been a positive exercise because they have enabled the Council to understand the International Criminal Court better and more fully. In that sense, as the representative of Canada stated at the beginning of the meeting, discussion of this issue in the Security Council, rather than being a cause for concern, is useful for the Council and for the future of the Court.

Colombia supports and will continue to support the creation, implementation and operation of the International Criminal Court. We are a signatory of the Statute, and we hope to ratify it shortly, once the constitutional review of the law of ratification issued by the Congress of the Republic is completed. We are acting in a manner consistent with that situation, with respect for our constitution, which recognizes the international commitments that we have undertaken and, in general, the norms of international law.

Colombia has taken part in recent discussions concerning the United States proposal in a constructive spirit. We are seeking to find a solution that will be good for the United Nations, the international community and each and every member of the Council. But in doing this, we have the political and legal responsibility to respect the Rome Statute in its entirety. We have stated our understanding of the insistent position taken and the concerns voiced by the United States delegation at each stage of the evolution of the Court. We repeat our understanding, bearing in mind the need to adopt positions compatible with the Statute.

The negotiations that will follow this debate should consider not only the opinions of all of those Member States that participate in this debate, but also the note of the Secretary-General addressed to the Secretary of State of the United States, which was

circulated to members of the Security Council on 3 July. This timely statement of the Secretary-General has legal and political importance that we recognize. This is the only opinion of an international nature thus far on this issue, and it is a vital point of reference for those of us who have signed the Statute and are at the same time members of the Security Council.

A Security Council resolution issued under Chapter VII cannot ignore the content of the provisions of the Rome Statute. Moreover, a resolution of this kind cannot interpret the mandates of the Statute above and beyond their content, or contradict the purpose of their provisions. To act otherwise would lead us to absurd conclusions. On the one hand, from the political standpoint, we would have a Security Council having competence to affect the authority and effectiveness of the jurisdiction of the International Criminal Court. On the other hand, from the legal standpoint, one would be expecting the Court to act on the basis of the Council's resolution and not in accordance with the Statute that brought it into being.

Concurring with the views expressed by many in this debate, Colombia would like to express its profound concern at the circumstances that have hampered the renewal of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). More generally speaking, we have expressed concern about the very future of peacekeeping operations.

For this reason, we insist on the validity of the principle of complementarity. Likewise, we take the view that the Rome Statute itself provides for valid and effective options to protect the interests of States that are not party to the Statute. Neither of these provisions can ever lead to an acceptance of conduct that constitutes a grave violation of human life and dignity and that would ultimately fall under the jurisdiction of the ICC. Therefore, in our view, the Security Council should be able to find a solution that would make full validity for the Rome Statute compatible with the need to preserve peacekeeping operations.

We conclude our statement by affirming the importance of perfecting the ICC, seeking to make it more efficient in order to prevent the crimes over which it has jurisdiction from being committed, but especially with a view to building it up as a subsidiary instrument to the action of national courts — courts that, given the validity of the Court, are obliged to be more active and vigilant in the face of crimes of extreme gravity that have universal impact.

The international community, through the Assembly of States Parties to the Statute or through the Security Council itself, would be obliged to discharge a monitoring function if the conclusion were reached that there was evidence of biased action or transgressions by the ICC. Abuses of justice are a real possibility in any judicial organ. Such deficiencies will not be resolved through less justice but by means of subsequent monitoring measures taken by intergovernmental organs enjoying broad-ranging international legitimacy to exercise such control.

The President: The next speaker inscribed on my list is the representative of Samoa. I invite him to take a seat at the Council table and to make his statement.

Mr. Slade (Samoa): We thank you, Sir, and we thank the Council for the opportunity to take part in this open meeting. Samoa has sought to be heard in the debate as a contributor to United Nations peacekeeping operations and because of our unalterable faith in the Rome Statute of the International Criminal Court (ICC). My country has been active and committed in its support for the establishment of the Court and remains actively engaged.

Our concern is that the draft proposal before the Security Council in connection with the United Nations Mission in Bosnia and Herzegovina will, in our view, undermine the purpose and meaning of the Rome Statute. It will also raise rather fundamental issues that touch on the obligations and responsibilities of States under international law and, to our mind, will have reflections on the role of the Security Council.

We believe that every State, whether a signatory or ratifier of the Rome Statute, is under obligation not to act in contradiction of the Statute. Indeed, by the terms of the Vienna Convention, we would regard States as duty-bound by treaty law to ensure the integrity of the Statute and not to undermine it in any material way.

The draft we have seen proposes to exempt peacekeepers from the jurisdiction of the Court by way of blanket immunity. Respectfully, we say that such exemption would be unnecessary and would set the wrong standards. Furthermore, we cannot see how that can be viewed as being consistent with article 16 of the

Rome Statute, as the draft asserts, when the very purpose of the Statute is to put an end to impunity.

More seriously, the draft purports, pursuant to article 16, to grant immunity on a permanent basis. Yet it is apparent on the face of the article that the true meaning and intent is to enable the Security Council to judge each case on the basis of its particular circumstances. There is clearly no ground for a determination in advance, and then in perpetuity. Our contention, therefore, is that the purported use of article 16 would be plainly ultra vires. I believe there is an abundance of material from the negotiation process that would support such a contention.

So, too, in the absence of a situation threatening or breaching international peace and security, would we question the vires in the purported use of Chapter VII of the Charter. In our view, it seems very doubtful that the requisite circumstances exist in this case to bring into play Article 39 of the Charter and Chapter VII.

We do recognize and we do respect the concerns of the United States. At least initially, others shared the essential point of their concern. At all times throughout the negotiations the most serious and conscientious effort was made by all concerned to find the right accommodation. The United States played an important part in that effort. The consensus reached, by way of the provisions on complementarity, is enshrined in the Rome Statute. Fundamentally, they reaffirm and leave to national courts the primary responsibility for the prosecution of their nationals. We believe these provisions offer protection and substantially address the concerns expressed.

As I close, may I note the Secretary-General's letter of 3 July, which has been circulated to the Council, and his advice on pragmatic solutions for consideration. We would respectfully recommend to the Council the type of options suggested by the Secretary-General. They correctly focus on the crucial objective of ensuring the stability and the security of Bosnia. Putting the Rome Statute at risk in the process cannot be an option.

The President: The next speaker inscribed on my list is the representative of Malaysia. I invite him to take a seat at the Council table and to make his statement.

Mr. Hasmy (Malaysia): My delegation would like to thank you, Mr. President, for convening this open meeting of the Council, which will allow the Member States to express their views on this very important issue.

For the past few weeks, the larger membership of this Organization has been closely monitoring the issue from the sidelines. We watched with great interest and growing unease the developments in the Council which threatened to jeopardize the continuing mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). We were gratified that on 3 July the Council agreed to extend the mandate of UNMIBH until 15 July. The 12-day technical rollover will allow more time for consultations among Council members so that a compromise could be worked out.

It cannot be denied that since its establishment UNMIBH has made a tremendous contribution towards consolidating the rule of law and political stability in Bosnia and Herzegovina. It is also clear that UNMIBH is rapidly moving towards completing its core tasks by the end of the year. Nevertheless, as also noted by the Secretary-General, the Bosnian State and its institutions are still fragile and under pressure from the so-called nationalist forces. The continuing failure to apprehend indicted war criminals also remains an obstacle to permanent peace and national reconciliation in Bosnia and Herzegovina. It is important, under the present circumstances, for the Council to continue its support for Bosnia and Herzegovina by extending, as planned, the mandate of the Mission.

The continuing existence of UNMIBH would allow the United Nations to proceed without interruption its planned activities for Bosnia and Herzegovina, including the holding of national elections on 5 October 2002. That would be an important day for the people of Bosnia and Herzegovina, and it would be a shame if the elections were marred by the Council's failure to extend UNMIBH's mandate. Such an outcome would be a great mistake, tantamount to the Council abandoning its responsibility towards the maintenance of international peace and security in the still unstable Balkans.

As a country that has consistently supported United Nations and international involvement in Bosnia and Herzegovina, Malaysia hopes nothing will be done by the Council that would jeopardize peace

and security in that country and dash the hopes and aspirations of its people.

We regret that the Security Council has been placed in a difficult and untenable situation with respect to the continuance of UNMIBH and, more specifically, to the future of United Nations peacekeeping operations in general. We understand and respect the concerns of the United States pertaining to the International Criminal Court (ICC); we also have concerns and reservations, and it would have been convenient for us not to participate in this debate.

Notwithstanding its position on the ICC, Malaysia views the enactment of the Rome Statute and the establishment of the ICC as significant to the development of international law to address the impunity of war crimes, genocide, crimes against humanity and crimes of aggression, which are major concerns for Member States, without exception.

Therefore we consider it inappropriate for the future of UNMIBH, and possibly other United Nations peacekeeping operations, to be linked to the issue of the jurisdiction of the ICC. The objectives of the ICC and peacekeeping operations do not contradict each other, and the existence of one should not preclude the other.

Malaysia is particularly concerned about the view that the ICC is a threat to peacekeepers in that they are vulnerable to "politicized prosecutions". Should this view gain currency, it would seriously undermine United Nations peacekeeping operations or even lead to their demise, as no State would be willing to put their troops at risk.

Malaysia believes that giving immunity to the peacekeepers would send a wrong and unacceptable message, that they are above the law. No category of persons serving in United Nations peacekeeping missions should be above the law. We believe there are sufficient safeguards, mentioned by previous speakers, to ensure that the ICC does not obstruct the functioning of peacekeeping operations. We believe the fears and concerns of the United States are unfounded. We also believe these fears and concerns have been allayed by statements made in the Council as well as by the Secretary-General's letter of 3 July, and we hope that the United States will be able to reconsider its position. Like many others, we attach importance to the role and participation of the United States in UNMIBH and other United Nations peacekeeping missions and express the hope that it will continue to be actively engaged in current and future United Nations peacekeeping missions.

Peacekeeping is, and remains, an essential and indispensable tool available to the United Nations for maintaining international peace and security. However, its viability and effectiveness would be seriously affected if it were to allow different sets of rules to govern different groups of peacekeepers. Consistency and universality are essential elements in ensuring the success of United Nations peacekeeping operations, in as much as they are essential in the operationalization of international law. There is no room for special exceptions or exemptions under international law.

What is at stake is a fundamental principle of international law. It is vitally important for the Council not to take a decision that would have the effect of changing or amending the terms of an international treaty, which the United States draft resolution sets out to do in respect of the Rome Statute. Such changes or amendments could only be effected in accordance with procedures established by the treaty, with the full consent of the States parties, as provided for by the Vienna Convention on the Law of Treaties. We do not believe that the Security Council should be empowered to override the intention of the parties to any treaty. That would establish a bad precedent, with serious future ramifications.

We fear that adoption of the United States proposal would place the Security Council in a difficult position. Its credibility would be questioned, as a number of parties to the Rome Statute have indicated they would be compelled to re-examine the legality of such a decision of the Council. Therefore, we hope the Council will be able to find the collective wisdom and political will to resolve the matter amicably as early as possible without jeopardizing UNMIBH's extension and the functioning of other United Nations peacekeeping missions. We trust, Mr. President, that your own leadership role and well-known creativity and resourcefulness will enable you to resolve this impasse in the Council without compromising fundamental principles and norms of international law.

The President: The next speaker on my list is the representative of Germany. I invite him to take a seat at the Council table and to make his statement.

Mr. Schumacher (Germany): Germany fully supports the position of the European Union as

presented by the Danish Presidency. We will therefore restrict ourselves to some additional elements we deem particularly important.

Germany has considered itself a major driving force in the creation of an International Criminal Court (ICC) from the very beginning. One of the major lessons we have learned from the past is that impunity for genocide, crimes against humanity and war crimes must not be allowed to stand.

The Security Council has been asked to invoke Chapter VII of the United Nations Charter, beyond the extension of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) mandate, to obtain immunity for peace mission personnel. Chapter VII of the United Nations Charter requires the existence of a threat to the peace, a breach of the peace or an act of aggression — none of which, in our view, is present in this case. The Security Council would thus be running the risk of undermining its own authority and credibility.

It is the strong belief of Germany that — beyond the case-by-case possibilities clearly provided for in article 16 of the International Criminal Court (ICC) Statute — the Security Council would do itself and the world community a disservice if it adopted a resolution under Chapter VII of the Charter to, in effect, amend an important treaty ratified by 76 States.

We commend peace mission personnel, both collectively and individually, for their admirable performance under conditions which more often than not are difficult and dangerous. It is no more than a theoretical possibility that they would commit crimes falling under the jurisdiction of the ICC. To assert the necessity of excluding this merely theoretical possibility would, in our view, be tantamount to compromising both the Rome Statute and the integrity of mission personnel.

We urge the members of the Security Council to find a solution, on a case-by-case basis, which safeguards the integrity of the Security Council, with its primary responsibility for the maintenance of international peace and security, as well as of international peace missions and the international treaty regimes.

The President: I will now give the floor to the two remaining members of the Security Council.

Mr. Wehbe (Syrian Arab Republic) (*spoke in Arabic*): My delegation would like to express its appreciation and gratitude to you, Mr. President, for having convened this open meeting on peacekeeping operations and their relationship with the International Criminal Court (ICC). I should also like to join you in offering our warmest congratulation to the African Group on the creation of the African Union.

Syria actively participated in all of the preparatory meetings held by the United Nations with a view to establishing the International Criminal Court. Syria has signed the Statute and is still playing an active role in all current preparatory meetings. We reiterate our interest in maintaining all the elements of international law. We further reaffirm the importance of United Nations peacekeeping missions, working within their mandate to maintain stability and ensure conditions of calm in areas ravaged by conflict, in accordance with Security Council resolutions.

The Secretary-General has made it clear in this respect that there is no historical precedent for peacekeeping forces perpetrating criminal acts and thus violating international law such that they would be accountable to the International Criminal Court. The ICC, whose Statute was adopted in Rome and which entered into force in July this year, has permanent jurisdiction. The whole world has freely and voluntarily created it to be just, fair and neutral and to try, without discrimination or exception, those accused of crimes against humanity, genocide, war crimes and other acts of aggression, after all the documents relevant to such acts of aggression are complete, noticing that the provision of such documents is being discussed currently.

We are fully confident that the troops in peacekeeping forces will not perpetrate acts that will result in their prosecution by the ICC. The thresholds that need to be reached in order for a crime to fall within the jurisdiction of the ICC were decided upon by all the Members of the United Nations in the course of the preparatory and intersessional meetings.

All cases before the ICC will be tried on the basis of complementarity. That means that the Court will not be allowed to begin work unless it is proved that the national jurisdiction has collapsed. Prosecution will be able to proceed in the country concerned, overriding the jurisdiction of the ICC, unless it is clear that those national courts have not fulfilled their duties in accordance with the law — in other words, if those

national courts have not tried cases in a manner commensurate with the nature of the crime.

Furthermore, there are numerous legal safeguards in the Statute in case the jurisdiction of the ICC comes into play. The Syrian Arab Republic therefore believes that a suitable solution to this question must be found. Peacekeeping forces and their mandates should not be held hostage to arguments that do not concern them directly. We encourage further dialogue between States parties and signatories to the ICC Statute and those countries that have specific concerns and apprehensions so that such anxieties can be alleviated and a legal solution found that is in keeping with the provisions of the Rome Statute and that also preserves the integrity of peacekeeping operations, since such operations provide a lifeline for peace. Consequently, we all are in duty bound to maintain those peacekeeping operations and strengthen, enhance and consolidate them.

In conclusion, we would stress once again that the Security Council does not have the right to take decisions under Chapter VII to amend an international treaty that has entered into force, because this would constitute a precedent that would destabilize and undermine the international legal regime. Such an action is also outside the purview of the Security Council, whose principal task, as set out in the Charter, is the maintenance of international peace and security.

The Security Council has discussed this question at length for the past two weeks. We are still hopeful and optimistic that the Council will be able to elaborate a proposal that would pave the way for a solution to this dilemma, within the framework of the safeguards available, so as to maintain the credibility of the Council while preserving the integrity of the Rome Statute and, most important, of peacekeeping forces as a whole.

Mr. Tidjani (Cameroon) (*spoke in French*): Like other African countries members of the Security Council, I should like at the outset to thank you, Mr. President, as well as those delegations that kindly congratulated and conveyed their best wishes to African countries on the creation yesterday of the African Union.

I should like also to thank you, Sir, for having taken the very commendable initiative of organizing this public meeting. Some would say that this is a public meeting on the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH). Others would highlight the preservation of the integrity of the Rome Statute. For Cameroon, this public meeting is devoted to peace and justice.

One of the guiding principles of Cameroon's actions in the context of the international community is the maintenance of international peace and security. My country has always been committed to equitable and negotiated solutions and to any culture that advocates peace and security while promoting development.

International peace and security were threatened in Bosnia and Herzegovina. The Security Council decided to dispatch UNMIBH to the region, where it has done outstanding work. We have repeatedly had occasion to convey our congratulations to the men and women participating in that operation. More than once we have reiterated our support for them.

Today we deem it essential to bring to completion the tremendous work that has already been done in Bosnia and Herzegovina — work that is nearing its end with the upcoming transfer of authority from the United Nations to the European Union. It is also essential, we believe, to ensure the maintenance of conditions that are conducive to a negotiated solution in Prevlaka. That is why Cameroon echoes the wish expressed by the Secretary-General and very much hopes that UNMIBH's mandate will be extended until 31 December 2002. Such an extension would be the harbinger of a better future not only for the people of Bosnia and Herzegovina and the region of the Balkans, but also for any other peacekeeping operation in the world.

Regrettably, the question of extending UNMIBH's mandate has not commanded a consensus within the Council. We are therefore having to consider alternative solutions and to go from technical rollover to technical rollover.

Can those who act on behalf of the Security Council, those to whom the mission was entrusted to restore the shattered peace — can these soldiers of peace be brought before the International Criminal Court (ICC)? The answer to this is very clear. Those soldiers have the crucial duty of giving a human face to peacekeeping. They are doing this not for the sake of peace itself but for children, women and men. They do so in respect for life. These are safeguards enough to avoid unforeseen mistakes.

In this respect, we welcome the achievements that have been registered by peacekeeping operations thus far, and we agree with what the Secretary-General said in his letter addressed to the United States authorities, which had expressed concern as to the jurisdiction of the ICC with regard to Blue Helmets, for whom they are requesting an exemption from jurisdiction.

It should be recalled that the role of the United States in the maintenance of international peace and security is, quite simply, irreplaceable. The United States material contributions, as well as its human resource and financial contributions and the sacrifices made in terms of human lives are sometimes enormous, and these must be borne in mind if the current and future work of the United Nations in the area of the maintenance of international peace and security is to be viable.

My delegation understands perfectly well that the United States of America has some questions about the additional risk of any politicized prosecution of their personnel in the service of the United Nations by a Court whose Statute they did not ratify, and understands also that they are looking at ways and means of addressing such a risk.

In the evening of 17 July 1998 in Rome, Cameroon was among the first 11 countries to sign the Rome Statute of the ICC. Throughout the entire process of the establishment of the ICC, Cameroon worked together with other countries to ensure that the Rome Statute would address three crucial concerns: the independence and universality of the Court; its impartiality; and cooperation between the Court and the Security Council.

The process of ratification of the Statute is now under way in Cameroon, and the three concerns I have just mentioned are still relevant.

For about two weeks now, it has been clear that the United States, which has global responsibilities throughout the world, has established a very strong linkage between its contributions to United Nations peacekeeping operations and a solution to its concerns.

My delegation has already said that it is prepared to make a contribution to finding a pragmatic, consensus-based solution to this problem, which is having a negative effect on the unity of the Security Council, threatening United Nations peacekeeping operations and casting a pall over the ICC, whose entry into force the world welcomed just a few days ago.

We must make every effort to prevent the Court from being weakened and to make it effective and efficient. We believe that its contribution to the maintenance of peace is inestimable, because it reminds those who exercise power that the point of their actions is the human being, the right to life and respect for the integrity of the human person. There must be no clash between the International Criminal Court and the Security Council: both are working for peace.

Many approaches to a solution have been submitted, generally based on article 16 of the Rome Statute. In that context, we followed with interest the statement made earlier by Ambassador Levitte concerning the range of safeguards that the Rome Statute could offer in response to the concerns of the United States delegation. We think that articles 16 and 98, as well as the principle of complementarity, can constitute the basis for a solution to reconcile the integrity of the Rome Statute and the keen and profound concerns of the United States.

This public debate has been indispensable, because it has provided us with more information to enrich our ongoing discussion in the Security Council and in our respective capitals. Wisdom and pragmatism require that we: devote the necessary attention to the concerns expressed by the United States delegation; scrupulously respect the integrity of the Rome Statute and, beyond that, the international legal system; safeguard United Nations peacekeeping operations; and, as is only right, reconcile peace and justice. We are convinced that if there is real political will on all sides, we will find a path of consensus.

Cameroon would like to appeal to the United States, to the other members of the Security Council, to the great family of the United Nations and to the international community to work together to preserve and consolidate the noble ideals of peace, justice and security, without which our world would have no basis or reference to enable it to survive.

The President: I should like to inform the Council that I have received a letter from the representative of Cuba, in which he has requested to be invited to participate. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the

discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Rodríguez Parrilla (Cuba) took the seat reserved for him at the side of the Council Chamber.

The President: The next speaker inscribed on my list is the representative of Sierra Leone. I invite him to take a seat at the Council table and to make his statement.

Mr. Kamara (Sierra Leone): As always, Sierra Leone is delighted to see the United Kingdom assume the presidency of this body, and in particular to see you, Sir, chairing this open debate. In the same vein, we thank you for giving the delegation of Sierra Leone the opportunity to participate in the debate.

As the Council is aware, on 12 June 2000, the President of the Republic of Sierra Leone, His Excellency Alhaji Dr. Ahmad Tejan Kabbah, requested the United Nations to establish a special court as a means of bringing and maintaining peace and security in Sierra Leone and, indeed, in the West African subregion. Victims of heinous crimes in Sierra Leone, and victims all over the world, want justice to be done. My delegation believes they deserve it, and I am sure that the Council agrees. They are calling on the United Nations — especially the Security Council — to fight impunity and to hold accountable for their crimes the perpetrators of atrocities committed systematically and on a massive scale.

My delegation believes it unthinkable that peacekeepers would engage in atrocities systematically and on a massive scale. Under the circumstances, my delegation does not have apprehensions about future Sierra Leonean peacekeepers falling under the jurisdiction of the International Criminal Court (ICC). And even if Sierra Leonean nationals engaged in future peacekeeping activities were to commit atrocities systematically and on a massive scale, the Sierra Leonean judicial system would have primacy with respect to such nationals, in conformity with the principle of complementarity enshrined in the Statute of the ICC.

Victims of heinous crimes all over the world are crying out for justice, and we must give them hope that durable peace and a prosperous future are possible through the rule of law. Indeed, Sierra Leone is extremely grateful for the timely assistance and support provided by the Government and the people of the United States, and we hope that our country will finally recover and will be able to rebuild a free and democratic society based on justice and accountability.

Sierra Leone signed the Rome Statute of the International Criminal Court on 17 October 1998 and ratified it on 15 September 2000, joining those who believe that the creation of a jurisdiction capable of complementing national systems when they are unwilling or unable to prosecute suspects represents one of the most effective instruments that the international community has created to prevent future conflicts and to provide redress for millions of victims of outrageous violence.

Today the Security Council has been convened to take action on a proposal regarding the maintenance of peace. We hope that, in their deliberations, Council members will adhere to international law, bearing in mind that what is at stake here is not only respect for universal norms but also, and above all, the lives and welfare of millions of individuals.

In conclusion, I want to reaffirm Sierra Leone's unfettered commitment to the establishment of the International Criminal Court and to the maintenance of the integrity of its Statute.

The President: The next speaker inscribed on my list is the representative of Argentina. I invite him to take a seat at the Council table and to make his statement.

Mr. Listre (Argentina) (*spoke in Spanish*): First of all, I should like to say that my delegation associates itself with the statement made this morning by the representative of Costa Rica on behalf of the Rio Group.

In our view, the issue before us today is of the greatest importance in that it affects international relations with regard to two essential elements: peace and justice. Those two elements should not and cannot appear to be in contradiction or collision. On the contrary, each of them constitutes an essential condition for the other.

The Statute of the International Criminal Court entered into force just a few days ago with surprising speed, thanks to the firm and continuous support of the States and of civil society, which in that way have

reaffirmed their willingness to combat impunity through the investigation of the gravest international crimes and the prosecution of those responsible.

However, the International Criminal Court was not created to administer justice in a vacuum, above or against legitimate national interests or other objectives of the international community. On the contrary, the history of the negotiating process and the balance that the Statute's provisions represent reflect a clear objective: to reconcile the interests of the international community as a whole with national objectives of security and sovereignty. Its provisions also reflect a determination to establish a system that will make the Court's functions duly compatible with the needs of the functioning of the system of collective security. The Rome Statute is not in conflict with the system created in San Francisco. To the contrary, the International Criminal Court will definitely serve to bolster the system of maintenance of peace. We agree with the idea that there is no contradiction and no need to choose between them.

The proposals that are being considered in the Security Council might be detrimental to the ICC and to the Security Council itself. More generally, they might be injurious to the United Nations and to the rule of law. On one hand, they might lead to a distortion of the spirit and a departure from the letter of a key provision of the Rome Statute, thus undeniably and seriously weakening the powers of the ICC to render justice in an independent and impartial manner. On the other hand, the adoption of proposals of this kind might also adversely affect the legitimacy of the Security Council, whose activities in this field would appear to exceed the powers conferred on it by the Charter.

Above and beyond these considerations, we need to bear in mind that what is at stake in this debate is the continuity of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) and possibly of other peacekeeping operations, which, together with sanctions, are the fundamental instruments for the Security Council's effectiveness in fulfilling its primary responsibility of maintaining international peace and security, entrusted to it by the Member States of the United Nations. For that reason, my Government hopes that the members of the Council will find a practical solution that will make it possible to renew UNMIBH's mandate, securing the future of peacekeeping operations and safeguarding the future of the International Criminal Court.

The President: The next speaker inscribed on my list is the representative of the Federal Republic of Yugoslavia. I invite him to take a seat at the Council table and to make his statement.

Mr. Šahović (Yugoslavia): At the outset, I would like to congratulate you, Sir, on your assumption of the presidency of the Security Council for the month of July. I would also like to thank you for convening this meeting, where we are discussing extremely important issues that transcend the item on the Council's agenda — the situation in Bosnia and Herzegovina.

Those who spoke before me, Council and non-Council members, described very eloquently the problem that has preoccupied the Council and the Organization as a whole in the past few weeks. Indeed, the question is whether a solution can be found that will avoid jeopardizing the role of the newly established International Criminal Court (ICC) before it has even started its work, as well as the United Nations concept of peacekeeping.

The Federal Republic of Yugoslavia was among the first 60 countries that ratified the Rome Statute, which brought the ICC into being. We share the belief that the Court is the cornerstone of the international legal system. Everything should be done to enable this institution to perform its envisaged role.

Every month I come to this table to discuss the performance of the United Nations Interim Administration in Kosovo and Metohija. Now, of course, this debate is immediately connected to the United Nations presence in Bosnia and Herzegovina. In a few days, the Council is scheduled to review and extend the mandate of the United Nations Mission of Observers in Prevlaka. Later this month, the President of the International Criminal Tribunal for the Former Yugoslavia is scheduled to address the Council, and the Special Representative of the Secretary-General and head of the United Nations Interim Administration Mission in Kosovo, Mr. Steiner, will again submit his periodic report to the Council. This, of course, is a consequence of the decade-long tragic conflicts in my country and its surroundings.

At the same time, that is also a manifestation of the continued involvement of the international community and the United Nations in particular in our region. True, important progress has been made in stabilizing the Balkans and in rebuilding our post-conflict societies. All countries involved have been

contributing to the achievement of the region's lasting peace and stability. In fact, next Monday, the same day that the fate of UNMIBH is to be decided, the Presidents of Bosnia and Herzegovina, Croatia and Yugoslavia will meet in Sarajevo, demonstrating their determination to work towards that goal.

However, while that positive process is irreversible, it is not yet complete. The presence of the international community is still very much needed. The European Union, through its stabilization and association process, is playing the pivotal role. At the same time the United Nations, through the Security Council and its peacekeeping capabilities, is an irreplaceable actor in the equation.

While, as I mentioned, the process towards peace and stability is under way, there are still forces in our area that would like to see the process fail. These forces have been politically defeated, but they have not yet been buried in history. They will certainly look forward and try to take advantage of the withdrawal of the United Nations from our region and the failure of the ICC to stand on its feet. There is no need to elaborate on the serious consequences that such developments may entail.

Of course, it is not only peacekeeping in the Balkans that is at stake; peacekeeping elsewhere is also at stake. As already emphasized here today, Africa and its newly born Union, which we warmly welcome, rely significantly on the United Nations peacekeeping effort for their future.

Although the topic of the debate is extremely complex, the thrust of my message today is very simple. I appeal to the members of the Council to find a way out of the present stalemate. We understand that there are diverging legitimate concerns. However, we would like to believe that the understanding of the overall context of the topic we are debating will prevail and a solution acceptable to all will be found. That solution will ensure that the Council's credibility is preserved, that the international rule of law is maintained and that we all — in particular those of us in the troubled parts of the world — will be able to continue to rely on United Nations peacekeeping in our efforts to achieve genuine peace and security.

The President: The next speaker inscribed on my list is the representative of Cuba. I invite him to take a seat at the Council table and to make his statement.

Mr. Rodríguez Parrilla (Cuba) (*spoke in Spanish*): Cuba wishes the presidency of the United Kingdom every success in the Security Council and also wishes to pay tribute to the fruitful Syrian presidency. We all welcomed the good news today of the establishment of the African Union.

The Security Council is not the appropriate organ to debate the law of treaties or to discuss the International Criminal Court (ICC) simply because the Charter of the United Nations does not confer on it powers to do so.

However, the issue being discussed today has implications for the very essence of the United Nations system and its capacity for maintenance of international peace and security. It has to do with the future of the principles of international law.

Cuba is not a party to the Rome Statute. At the same time, we believe that the legitimate rights of States that have taken the sovereign decision to sign and ratify that legal instrument must be respected.

The unusual decision of the Government of the United States, announced on 6 May 2002, to "cancel" its signature of the Rome Statute was already in itself a disquieting action. It demonstrated that there are absolutely no guarantees concerning legal instruments already signed or those that that country could sign in the future.

The proposals being made in this body by the delegation of the United States regarding the scope of the jurisdiction of the International Criminal Court are, in a few words, an armed assault on the law of treaties. The ultimate aim is to expand the powers of the Security Council even further in order to give it the capacity to amend international treaties, a right that belongs solely to the States parties to a given treaty. The Council has no power to amend the legal regime established by a treaty. Nor can the Council be given the power to extract norms from treaties that have been agreed to by sovereign States parties — and which generate rights and obligations solely for those parties — and make them binding on all States Members of the United Nations by invoking Chapter VII of the Charter.

In essence, what we are debating today is the validity of the Charter of the United Nations and the mandate it has conferred on the Security Council. Were the Council to endorse the gross violation of the

Charter and international law that this attempt seeks to impose on it, it would imperil the founding principles of the United Nations as well as the very existence of the Organization as it is defined in the Charter.

On what grounds does the United States try to justify its attempt to take refuge in the veto and to guarantee illegitimate immunity? Allow me to quote the reply given to that question by the Ambassador of that country during his statement in this very Chamber on Sunday, 30 June:

> "Some contend that our concerns are unwarranted. With our global responsibilities, we are and will remain a special target and cannot have our decisions second-guessed by a court whose jurisdiction we do not recognize." (*S/PV.4563, p. 2*)

Curiously enough, that argument was not mentioned this morning. In other words, they would have us believe that they deserve different treatment as "payment" for the risks associated with their self-proclaimed and unrequested status as guarantors of peace and security in the world. In order to maintain the serious tone that this debate merits, I will refrain from commenting on those assertions.

The inconsistencies and the double standards present in the position of the United States become evident, among other things, when, at the same time that they express opposition to the International Criminal Court they maintain their firm support for the Criminal Tribunal for the Former Yugoslavia and other ad hoc tribunals created precisely by decisions of the Security Council and with, as the representative of the United States recognized a few hours ago, a "key role" (supra) played by the United States.

What is happening today reflects the increasingly unilateral policies of the United States. What we are debating today cannot be seen in isolation from other recent actions of the United States, including its unilateral withdrawal from the Anti-Ballistic Missile Treaty and the Kyoto Protocol, its refusal to accept the Comprehensive Nuclear-Test-Ban Treaty, its decision to set up a national missile defence system, its blockage of the negotiations to adopt a verification protocol for the Biological Weapons Convention, its proclamation at West Point of a new doctrine providing for preventive unilateral attacks on other countries on the pretext of combating terrorism, and its disclosure of a revised nuclear posture, which has received broad international condemnation.

It is simply unacceptable for the United States to now hold United Nations peacekeeping operations hostage to narrow national interests. The threat of the veto jeopardizes not only the existence of the United Nations Mission in Bosnia and Herzegovina; it also threatens the other 14 operations now deployed.

We fully support the statement contained in the recent letter of the Secretary-General to the Secretary of State of the United States to the effect that the proposals put forward by that country fly in the face of treaty law and that the only real result of their adoption would be that the Security Council would risk being discredited. If the Council gives in to pressure from the United States, it must face the grave consequences of such irresponsibility. The meagre credibility that this body still retains would simply vanish completely.

We are witnessing unlimited arrogance on the part of the world super-Power, which is now demanding the right to act and conduct itself like an empire to which international and other laws do not apply. This must be vigorously rejected by the countries represented at this table. At this stage, the members of the Security Council have the duty to act in a manner commensurate with the scale of their important responsibilities. We trust that the majority will do so.

The President: I shall now make a statement in my capacity as the representative of the United Kingdom.

The United Kingdom associates itself fully with the declaration made on behalf of the European Union by the Danish Presidency. As we have often said in discussions of this issue in recent days, we understand, but do not share, the concerns of the United States about the International Criminal Court (ICC). From the beginning we have taken the view that those concerns are fully addressed within the framework of the ICC Statute. That is why the United Kingdom is a party to the Statute and a strong supporter of the Court.

We have also said from the beginning that the concerns of the United States create a potential problem for the Security Council, and for the United Nations generally, of considerable magnitude. This debate today has raised equally clear concern for the International Criminal Court and for United Nations

peacekeeping. The United Kingdom has all along taken the view that members of the Council and Members of the United Nations should work for, and be prepared to support, a responsible solution that will encourage the ICC to fulfil its functions in accordance with its Statute while, at the same time, permitting the continuation of the equally vital operations of the United Nations with regard to peacekeeping and similar issues.

The United Kingdom will continue to work for both those ends; and we will continue to work with others to help build stability in Bosnia and Herzegovina. We regret the uncertainty over the future of the United Nations Mission in Bosnia Herzegovina and Stabilization Force mandate that has arisen in the past days, and we call on all sides to work to find a solution to provide a sound basis for future United Nations engagement in Bosnia and elsewhere.

Finally, I have listened carefully to the comments of several representatives about the powers of the Security Council in this matter. The United Kingdom shares the concern that actions of the Council should remain within the scope of its powers. Article 39 of the United Nations Charter is relevant in that respect. We are equally firm that solutions to this problem should be consistent with the ICC Statute.

I now resume my functions as President of the Security Council.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 5.10 p.m.